watches from Sherida. Full details of these watches were entered by Sherida, in the ordinary course of his business, in both the Day Book and the Stock Book. If, in fact, watches were returned to him on these dates it does seem to me remarkable that no entry was made by him in these books in the same way as on the previous occasion of the 17th May, 1954, when watches were returned to him. These books were regularly kept by him up to the date of his sudden death on the 29th July, 1955. There is no reason whatsoever to believe that Sherida was other than an honest man, and I find it impossible to believe that his omission on one or both occasions to record details of the watches returned, if, in fact, they were returned, was due to a mere lapse of memory; particularly having regard to the fact that he had recorded on both these dates in both his Day Book and Stock Book full details of watches sold by him to the defendant, so that if, in fact, watches had been returned to him on those dates the incidents and details of that return would be fresh in his memory.

The burden of proving the return of these watches rests upon the defendant. On the balance of probabilities I am impelled to the conclusion that the defendant has failed to discharge that burden of proof. There must accordingly be judgment for the plaintiffs for the residue of the amount claimed, being $45,738 together with the sum of $9.10, being an admitted and incidental amount in respect of certain Bank and cable charges, together with costs on the higher scale.

The stay of execution in respect of the $7,158.60 to be removed.

Judgment for the plaintiffs.

Solicitors: *Presgrave & Matthews; Chew Choon Poon.*

GOH LIONG LAM & ORS. v. REG.

[C.C.A. (Whyatt C.J., Tan Ah Tah and Chua JJ.) March 10, 1958]

[Singapore — Criminal Appeal No. 31 of 1957]

Evidence — Child witness — Unsworn evidence — Corroboration necessary — Direction to jury treating as corroborative evidence which is not — Ground for quashing conviction.

In the absence of any local statutory provision corresponding to that in force in England, the acceptance of the unsworn evidence of a child should be subject to the same principles or rules of practice as apply to the acceptance of the evidence of accomplices. *R. v. Velayuthan*(3) applied.

Where there is a sufficient warning given by the trial Judge but in the summing-up matters are suggested as being corroborative which in fact are no corroboration at all then the conviction may be quashed by the Court of Criminal Appeal. *R. v. Phillips*(2) followed.

[**Editorial Note**: The absence of corroboration is not by itself a fatal objection to the validity of the conviction, but the appellate Court will scrutinize the record very carefully, because it is always an extreme thing to convict anyone on an unsworn evidence. *per* Murray-Aynsley C.J. in *X.Y. v. R.*, (1950) M.L.J. 51.]

Cases referred to:—

(1) *R. v. Baskerville*, (1916) 2 K.B. 658; 12 Cr.App.R. 81.

(2) *R. v. Phillips*, (1924), 18 Cr.App.R. 115.

(3) *R. v. Velayuthan* (1935) M.L.J. 277.

COURT OF CRIMINAL APPEAL.

David Marshall for the 1st and 3rd appellant.

L. Rayner for the 2nd appellant.

J. B. Jeyaratnam (Crown Counsel) for the respondent.

The judgment of the Court was delivered by —

Whyatt C.J.: — The three appellants were convicted at the Assizes of the murder of Chan Eng Hor on the 27th June, 1957. They now appeal against conviction.

The Crown's case was that the first appellant, Goh Liong Lam, plunged a bearing scraper into the back of Chan Eng Hor, an itinerant medicine vendor, while he was walking at about 6.30 p.m. on the 27th June, 1957 with his young daughter Chan Fong Chan, aged 10 years, along a path off Balestier Road and that the second appellant, Woon Ah Kiew and the third appellant, Yong Ah Soy were near to the scene of the crime and that it was the common intention of all the three appellants, together with others, to kill Chan Eng Hor.

The main evidence called by the Crown, apart from the evidence of Chan Fong Chan the daughter of the murdered man, was that of accomplices. One of such accomplices was Arthur Ng Soon Huat, a boy of 14 years of age.

Arthur Ng Soon Huat's evidence was that he was with the second appellant and the third appellant on six successive days ending with the 27th June, 1957 when arrangements were made and steps were taken towards killing Chan Eng Hor and that he was with the first appellant, when the murder was actually committed. He said that he was just behind the first appellant, both riding bicycles, when the first appellant stabbed Chan Eng Hor in the back with a bearing

scraper and that the second appellant and the third appellant were near to the scene of the crime.

Three other accomplices gave evidence for the Crown as to the plans and arrangements made before the 27th June to kill Chan Eng Hor and they all mentioned that the second appellant and the third appellant were present on every occasion when such plans and arrangements were made.

Chan Fong Chan gave unsworn evidence (the trial Judge being of the opinion that she was too young to give evidence on oath) to the effect that she was walking just in front of her father on the 27th June in the path when she saw two male Chinese on bicycles stop to talk to her father and that after that she and her father continued on their way along this path, she walking just in front of her father, when she heard her father shout and she turned back and saw a knife in her father's back and these two male Chinese riding past them. In Court she recognised the first appellant as one of these two men but she failed to recognise Arthur Ng Soon Huat as the other of these two men.

The Crown also called Lim Ah San who said one day in June 1957 he lent his bicycle, which then had a racing handle, to one Hock Seng and after a week he went to see Hock Seng to get back his bicycle. Hock Seng took him to first appellant's house: he did not get his bicycle back that day but he was told to come back the following day. He, however, did not go back the following day but went back a week later and the first appellant returned to him the bicycle which still had a racing handle. Two weeks after he got back his bicycle he substituted a straight handle for the racing handle and when the bicycle was seized by the Police it had a straight handle.

A variety of grounds of appeal have been urged on behalf of the first appellant but there are only two grounds which it is necessary to deal with at any length.

The first of these two grounds is that the trial Judge erred in law in that he directed the Jury that it was in their province to decide whether the evidence of the use by the first appellant of a bicycle with changed handles constituted in law corroboration of accomplice evidence.

In his summing-up the trial Judge pointed out to the Jury the danger of acting on the uncorroborated evidence of an accomplice and he told the Jury what in law was meant by corroboration and in the course of dealing with the evidence of Arthur Ng Soon Huat the trial Judge said:—

> "Now is there any corroboration of Arthur's evidence given in this case, you are bound to ask yourselves? Now the learned Deputy says the evidence given by the owner of the bicycle is corroboration, or is some corroboration, of the evidence of Arthur as well as of some of the other accomplices so far as the first accused is concerned, because he says, the owner of the bicycle says, that when he lent the bicycle to someone else it had this handle, it had a racing handle and the learned Deputy says that all the accomplices, those accomplices who speak about the first accused riding a bicycle, all say that the bicycle had this handle and not as it is now. It is, however, entirely a matter for you."

Counsel for the first appellant complained that there was misdirection. He submitted that the evidence of the bicycle owner, Lim Ah San, did not in law corroborate the evidence of the accomplices.

The kind of corroboration that is required was considered by the English Court of Criminal Appeal in the case of *R. v. Baskerville*[1] and we need only quote the following passage from the judgment of that Court:—

> "We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it. The test applicable to determine the nature and extent of the corroboration is thus the same whether the case falls within the rule of practice at common law or within that class of offence for which corroboration is required by statute. The language of the statute, "implicating the accused," compendiously incorporates the test applicable at common law in the rule of practice. The nature of the corroboration will necessarily vary according to the particular circumstances of the offence charged. It would be in a high degree dangerous to attempt to formulate the kind of evidence which would be regarded as corroboration, except to say that corroborative evidence is evidence which shews or tends to shew that the story of the accomplice that the accused committed the crime is true, not merely that the crime has been committed, but that it was committed by the accused."

In the present case when the evidence of the owner of the bicycle is looked at, it is quite plain that there was no corroboration of the accomplices' evidence.

Now it is quite true that in this part of the summing-up the trial Judge was dealing with what the prosecution suggested was corroboration of the accomplices' evidence but the trial Judge left the matter to be considered by the Jury and the Jury must have thought that such evidence was capable in law of amounting to corroboration of the accomplices' evidence.

Where there is a sufficient warning given by the trial Judge but in the summing-up matters are suggested as being corroborative which in fact are not and there is in fact no corroboration at all then the conviction may be quashed by this Court. (*R. v. Phillips.*[2])

We now come to the second ground, which is in fact the main ground of appeal, and it is that the trial Judge erred in law in that he did not direct the Jury that it was dangerous and unsafe to accept the unsworn evidence of Chan Fong Chan unless the same was corroborated in a material particular implicating the first appellant.

It is clear, that although the summing-up was a very careful summing-up, this particular matter was not mentioned and in fact no warning was given to the Jury that it was dangerous to accept the unsworn evidence of Chan Fong Chan unless the same was corroborated in a material particular implicating the first appellant, and the point to consider is whether in a case of this kind there should be such a warning. The Court is satisfied that in this case there was no corroboration.

The position in this Colony in regard to evidence given by a child of tender age differs from that in England. In England it is expressly provided by statute that no person shall be convicted of an offence upon the unsworn testimony of a child of tender age unless that evidence is corroborated by some other material evidence in support thereof implicating the accused.

In this Colony there is no such legal requirement and an accused person may in law be convicted on such uncorroborated evidence but it has been wisely laid down in the case of *R. v. Velayuthan*[3] by the Straits Settlements Court of Criminal Appeal that "in the absence from our law of any statutory provisions corresponding to that in force in England, the acceptance of the unsworn evidence of a child should be subject to the same principles or rules of practice as apply to the acceptance of the evidence of accomplices." Applying the principle laid in that case it is clear that it was the duty of the trial Judge in the present case to direct the Jury that whilst it was open to them to do so yet it was dangerous to act on the unsworn evidence of the child Chan Fong Chan unless such evidence was corroborated in some material particular implicating the accused. It was most unfortunate that Counsel who appeared in this case, both for the Crown and the appellants, did not draw the attention of the Court to the relevant decisions on this point.

The Court cannot say that if the warning had been given in this case the Jury must have convicted the first appellant. In these circumstances there is no course open to us but to allow the appeal not only of the first appellant but also the appeals of the second and third appellants whose convictions stand or fall with that of the first appellant.

Appeals allowed.

Solicitors: *David Marshall & Co.; L. Rayner.*

In re KOH SEK LIM, DECD.; THE PUBLIC TRUSTEE, SINGAPORE v. KOH KONG WAN & ANOR.

[O.C.J. (Whyatt C.J.) August 1, 1958]

[Singapore — Originating Summons No. 48 of 1958]

Will — Construction — Direction to pay certain expenses and outgoings from estate — Estate consisting of immovable property — Trustee having no power to sell or otherwise dispose of any of the corpus of the trust property.

The testator, Koh Sek Lim, died in 1948 leaving a Will which contained a number of unusual provisions some of which the Court was asked to construe in these proceedings. The assets comprised in the estate were also somewhat unusual. They consisted of cash in the bank and a large parcel of land of 536 acres containing extensive and valuable sand deposits, known as the Bedok Estate, and a few miscellaneous parcels of land of no particular importance. The cash in the bank and proceeds of sale of the miscellaneous parcels of land were applied in payment of estate duty and funeral expenses. After all testamentary expenses had been paid, the estate consisted of only one asset, i.e., the Bedok Estate.

By his Will the testator directed his trustees to stand possessed of his residuary estate after payment of debts and testamentary expenses and manage the same during the Trust Period, i.e., the lifetime of his sons and daughters and 21 years after the death of the last survivor of them, to distribute the income among his sons and daughters and two widows and at the expiration of the Trust Period, to divide the estate among the issue of his children *per stirpes* in certain specified shares. By clause 6 of his Will the testator declared that during the Trust Period, his trustees "shall not sell or otherwise dispose of any immoveable property forming part of my residuary estate." He also directed his trustees with regard to the application of income during the Trust Period to "Pay all quit rents, assessments, costs of repairs and insurances and other outgoings in respect of my residuary estate." The Will also directed the trustees to "set apart a Reserve Fund to meet any extraordinary expenditure which may be payable in respect of my residuary estate such sums as my trustees shall from time to time think fit, but